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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/610,128	07/05/2000	Bruce Kerievsky	1467.006	4622
7590 01/26/2010				
BRUCE KERIEVSKY 7 ARRANDALE AVENUE GREAT NECK, NY 11024			EXAMINER OUELLETTE, JONATHAN P	
			ART UNIT 3629	PAPER NUMBER
			MAIL DATE 01/26/2010	DELIVERY MODE PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRUCE KERIEVSKY

Appeal 2009-010918
Application 09/610,128
Technology Center 3600

Decided: January 26, 2010

Before ANTON W. FETTING, BIBHU R. MOHANTY, and
KEVIN F. TURNER, *Administrative Patent Judges*.

TURNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellant seeks our review under 35 U.S.C. § 134 of the final rejections of claims 37 and 39-59. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF THE DECISION

We AFFIRM.¹

THE INVENTION

Appellant's claimed invention relates to an interactive electronic cookbook which uses spoken instructions to prompt and direct the user during food preparation and responds to specific voice commands during the food preparation and recipe organization processes. (Abs.).

Independent claim 37, which is deemed to be representative, reads as follows:

37. A method for providing a recipe to a user in audible form, such that an interactive session is established, comprising:
 accessing a series of instructions related to a recipe;
 sequentially providing the series of instructions to the user using an output device that provides each of the instructions in an audible form for the user to hear;
 detecting a spoken utterance from the user while the series of instructions are being provided to the user;
 and
 responding to the spoken utterance by providing additional instructional data to the user using the output

¹ Our decision will make reference to the Appellant's Appeal Brief ("Br." filed Nov. 2, 2005) and the Examiner's Answer ("Ans.," mailed Mar. 9, 2009).

device to provide the additional instructional data in an audible form for the user to hear,

wherein an interactive cooking session is established such that a subsequent one of the instructions is not provided to the user until the user provides a particular spoken utterance requesting the subsequent instruction.

THE REJECTION

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Neuhaus	5,832,446	Nov. 3, 1998
Kolawa et al.	6,236,974 B1	May 22, 2001

Cade Metz, *Decisions, decisions*, PC Magazine, March 25, 1997, vol. 16, no. 6, at 162(3) ("Metz").

The Examiner rejected claims 37, 39, 43-50, 54-59 under 35 U.S.C. § 103(a) as being unpatentable over Neuhaus and Kolawa. Additionally, the Examiner rejected claims 40-42 and 51-53 under 35 U.S.C. § 103(a) as being unpatentable over Neuhaus, Kolawa and Metz.

Rather than repeat the arguments of the Appellant or the Examiner, we make reference to the Brief and the Answer for their respective details. Only those arguments actually made by the Appellant have been considered in this decision. Arguments that the Appellant did not make in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ISSUES

1. Has the Appellant shown the Examiner erred in finding that the combination of Neuhaus and Kolawa teaches or suggests “. . . an interactive cooking session is established such that a subsequent one of the instructions is not provided to the user until the user provides a particular spoken utterance requesting the subsequent instruction,” as generally recited in claims 37 and 49?

2. Has Appellant shown reversible error in that Metz, as applied to claims 40-42 and 51-53 fails to cure the deficiencies in the combination of Neuhaus and Kolawa under 35 U.S.C. § 103(a), as recited in claims 37 and 49?

FINDINGS OF FACT

The record supports the following findings of fact (FF) by at least a preponderance of the evidence. *In re Caveney*, 761 F.2d 671, 674 (Fed. Cir. 1985) (explaining the general evidentiary standard for proceedings before the Office).

Neuhaus

1. Neuhaus is directed to a computerized, electronic cooking encyclopedia which provides a search tool for accessing information about a variety of foods and beverages. (Abs.).

2. Neuhaus describes that the encyclopedia can provide video and audio instructions with respect to the cooking instructions of a chosen dish. (col. 6, ll. 15-17).

3. Neuhaus describes that a user clicks the next button to go through each of the steps in the preparation of a recipe. (col. 6, ll. 10-14).-

Kolawa

4. Kolawa is directed to a computer system which performs selection and organization tasks involved in suggesting products to a user, including menus for family meal planning. (col. 1, ll. 19-24).

5. Kolawa describes that instructions to the computer system may be given through a voice recognition system in order to input commands. (col. 3, ll. 59-63).

6. Kolawa's system presents users with explicit instructions on how to prepare the food. (col. 10, ll. 46-47).

Metz

7. Metz is an article which describes a digital database of recipes containing five separate cooking timers. (p. 5).

PRINCIPLES OF LAW

Obviousness

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying

factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 550 U.S. at 407 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”).

ANALYSIS

ISSUE 1

Claims 37, 39, 43-50, 54-59 rejected under 35 U.S.C. § 103(a) as being obvious over Neuhaus and Kolawa.

Independent claims 37 and 49

Appellant argues that the combination of Neuhaus and Kolawa fails to teach or suggest, “. . . an interactive cooking session is established such that a subsequent one of the instructions is not provided to the user until the user provides a particular spoken utterance requesting the subsequent instruction.” (Br. 4). Claim 49 recites similar limitations.

We are not persuaded by Appellant’s argument and agree with the Examiner’s findings. Specifically, we find that Neuhaus teaches an electronic cooking encyclopedia that provides video and audio instructions which allows a user to interactively follow a recipe. (FF 1, 2). However, in Neuhaus, this interactivity requires a user to click a button in order to advance to the subsequent instruction. (FF 3). Thus, we do agree with the

Appellant that alone, Neuhaus does not provide this interactive cooking session which specifically provides a subsequent instruction, in response to a spoken utterance.

However, the rejection of claims 37 and 49 is in view of the combination of Neuhaus and Kolawa, and to fully address this limitation, the Examiner additionally cited to Kolawa. (Ans. 5-7). Kolawa also teaches a system which presents users with instructions on how to prepare food, but the system of Kolawa is capable of receiving voice-enabled commands. (FF 4, 5, 6).

Additionally, in combining the references, the Examiner has provided an articulated reasoning with rational underpinning for why a person with ordinary skill in the art would modify Neuhaus to use the voice recognition capabilities of Kolawa. Specifically, the Examiner articulates a rationale based on the advantage of voice recognition which frees the user's hands to complete the cooking exercise as instructed. (Ans. 6).

Thus, we find that a person with ordinary skill in the art would know from Kolawa to apply this voice recognition technique to Neuhaus since both Neuhaus and Kolawa provide users with instructions to follow a recipe in a step by step manner. (FF 2, 6). Therefore, the combination of Neuhaus and Kolawa makes obvious "... an interactive cooking session is established such that a subsequent one of the instructions is not provided to the user until the user provides a particular spoken utterance requesting the subsequent instruction," as recited by claims 37 and 49.

Accordingly, Appellant's argument is not persuasive as to error in the rejection regarding both independent claims 37 and 49.

Dependent claims 39, 43-48, 50, and 54-59

Appellant does not separately argue claims 39, 43-48, 50, and 54-59 which depend from claims 39 and 49 respectively, and so has not sustained their burden of showing that the Examiner erred in rejecting claims 39, 43-48, 50, and 54-59 under 35 U.S.C. § 103(a) as being unpatentable over Neuhaus and Kolawa for the same reasons we found as to claims 37 and 49, *supra*.

ISSUE 2

Claims 40-42 and 51-53 rejected under 35 U.S.C. § 103(a) as being obvious over Neuhaus, Kolawa, and Metz.

Appellant does not separately argue claims 40-42 and 51-53, which depend from claims 39 and 49 respectively, and so has not sustained their burden of showing that the Examiner erred in rejecting claims 40-42 and 51-53 under 35 U.S.C. § 103(a) as being unpatentable over Neuhaus, Kolawa and Metz for the same reasons we found as to claims 37 and 49, *supra*.

CONCLUSIONS OF LAW

1. We conclude that Appellant has not shown that the Examiner erred finding that the combination of Neuhaus and Kolawa teaches or suggests “. . . an interactive cooking session is established such that a subsequent one of the instructions is not provided to the user until the user provides a particular spoken utterance requesting the subsequent instruction,” as generally recited in claims 37 and 49.

2. We conclude that the Appellant has not shown reversible error in that Metz, as applied to claims 40-42 and 51-53 fails to cure the deficiencies in the combination of Neuhaus and Kolawa under 35 U.S.C. § 103(a), as recited in claims 37 and 49.

DECISION

The decision of the Examiner to reject claims 37 and 39-59 is
AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)(2007).

AFFIRMED

ack

cc:

Appeal 2009-010918
Application 09/610,128

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